

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

3|5|2 CAPITAL GP LLC, ON BEHALF OF
3|5|2 CAPITAL ABS MASTER FUND LP,
et. al.,

Plaintiff,

vs.

RYAN WEAR, et. al.,

Defendants.

24-CV-5102 (VEC)

ORDER

WHEREAS on December 18, 2024, Plaintiffs filed the Declaration of Scott S. Balber (the “Balber Declaration” or “Balber Decl.”) in support of their application for entry of an order requiring Defendants 70 North Garden Avenue LLC, Aurora Building Products LLC, Bevteck Technologies LLC, C3 Capital Inc., Creative Technologies Florida, LLC, Drink Up Venture LLC, Emery Development LLC, Flagstaff Plumbing, LLC, Golden State Vending, LLC, Jeremy Briggs, K-2 mfg. LLC, Pistol Inc., Refreshing Kentucky LLC, Refreshing Midwest LLC, Refreshing Midwest Real Estate LLC, Refreshing Ohio LLC, Refreshing USA Merger Sub LLC, Refreshing Utah, LLC, Summit Management Services LLC, Valley Vending LLC, Vendpro LLC, Waterstation Technology II LLC, Waterstation Techventure LLC, WS SPV 1 LLC, WSM Capital Funding Inc. and WST Franchise Systems LLC to show cause as to why a default judgment should not be entered against them;

WHEREAS copies of the Initial Summons and Initial Complaint were served on Defendants 70 North Garden Avenue LLC, Aurora Building Products LLC, Bevteck Technologies LLC, Creative Technologies Florida, LLC, Drink Up Venture LLC, Emery Development LLC, Flagstaff Plumbing, LLC, Golden State Vending, LLC, K-2 mfg. LLC,

Refreshing Kentucky LLC, Refreshing Midwest LLC, Refreshing Midwest Real Estate LLC, Refreshing Ohio LLC, Refreshing USA Merger Sub LLC, Refreshing Utah, LLC, Summit Management Services LLC, Valley Vending LLC, Vendpro LLC, Waterstation Technology II LLC, Waterstation Techventure LLC, WS SPV 1 LLC, WSM Capital Funding Inc. and WST Franchise Systems LLC by personally serving Ryan Wear on July 25, 2024 (Balber Decl. ¶ 4; Dkts. 39, 40);

WHEREAS copies of the Initial Summons and Initial Complaint were served on Defendant Pistol Inc. by personally serving Chad Marlowe on July 15, 2024, and on defendant C3 Capital Inc. by personally serving Jordan Chirico on August 10, 2024 (Balber Decl. ¶ 5; Dkts. 26, 42);

WHEREAS on October 28, 2024, Plaintiffs filed an Amended Complaint; WHEREAS the Amended Complaint and summons were served on Defendant Jeremy Briggs on October 30, 2024;

WHEREAS the Amended Complaint was never served on Defendants 70 North Garden Avenue LLC, Aurora Building Products LLC, Bevteck Technologies LLC, Creative Technologies Florida, LLC, Drink Up Venture LLC, Emery Development LLC, Flagstaff Plumbing, LLC, Golden State Vending, LLC, K-2 mfg. LLC, Refreshing Kentucky LLC, Refreshing Midwest LLC, Refreshing Midwest Real Estate LLC, Refreshing Ohio LLC, Refreshing USA Merger Sub LLC, Refreshing Utah, LLC, Summit Management Services LLC, Valley Vending LLC, Vendpro LLC, Waterstation Technology II LLC, Waterstation Techventure LLC, WS SPV 1 LLC, WSM Capital Funding Inc., WST Franchise Systems LLC, Pistol, Inc., or C3 Capital Inc (the “Unserved Defendants”); and

WHEREAS “for a plaintiff to be entitled to a default judgment on an amended pleading, there must be an adequate showing that the relevant amended pleading was duly served.” *O’Callaghan v. Sifre*, 242 F.R.D. 69, 73 (S.D.N.Y. 2007); *see also Allstate Ins. Co. v. Yadgarov*, No. 11-CV-6187, 2014 WL 860019, at *8 (E.D.N.Y. Mar. 5, 2014) (“[O]nce the original complaint is superseded, a clerk’s entry of default on that pleading is mooted.”).

IT IS HEREBY ORDERED that the Court will not enter Plaintiffs’ Proposed Order to Show Cause (Dkt. 146) or Proposed Default Judgment (Dkt. 147). The Clerk of the Court is respectfully directed to STRIKE the Certificate of Default entered at Dkt. 143.

IT IS FURTHER ORDERED that Plaintiffs must serve the First Amended Complaint on the Unserved Defendants not later than **Tuesday, December 31, 2024**. Plaintiffs must move for an order to show cause why default judgment should not be entered against any Defendants that have failed to respond to the First Amended Complaint, in accordance with this Court’s Individual Practices, not later than **Friday, January 24, 2025**. Failure to adhere to either of these deadlines will result in Plaintiffs’ claims against Mr. Briggs and the Unserved Defendants being dismissed for failure to prosecute.

IT IS FURTHER ORDERED that Defendant Jeremy Briggs’s deadline to answer or otherwise respond to the First Amended Complaint is ADJOURNED to **Tuesday, January 21, 2025**. The Clerk of the Court is respectfully directed to mail a copy of this order to Mr. Briggs at 8100 242nd ST SW Unit A, Edmonds, WA 98026.

The attorneys on this matter are advised to pay closer attention to case management. In these early stages of litigation, the Court has already had to advise the experienced lawyers on this case on matters as simple as how to request page limit increases (Dkt. 113), how to file

notices of appearance (Dkt. 116), and, now, how to effect service. Moving forward, counsel is expected to approach this complex case with the level of diligence it demands.

SO ORDERED.

Date: December 20, 2024
New York, New York



VALERIE CAPRONI
United States District Judge